

**Minutes: BDCP CWA 404 Coordination  
November 10, 2011  
9:30 a.m. – 11:00 a.m.**

**Agencies:** USACE, DWR, EPA

- **NEPA purpose and need statement**

- EPA raised the issue of checkpoints for NEPA process and the NEPA purpose and need statement.
  - EPA raised the need to integrate other federal lead agencies with EIS—to ensure the EIS is sufficient for their decisions.
  - Reclamation, in particular, needs to review the statement.
  - Corps suggested a meeting with staff-level personnel rather than policy leads.
- The Corps has reviewed and finds the NEPA P/N statement adequate for Corps purposes.
- EPA raised the need for the P/N statement to go to EPA's NEPA office.
- P/N statement was scheduled to go out to federal lead agencies 11/14.
- A comment was raised that the P/N statement should be consistent across CEQA and NEPA.
- DWR emphasizes that NEPA Purpose statement reflects a consensus that was carefully negotiated between the federal agencies.
- The interim revisions and review will focus on ensuring that lead agencies find the P/N statement adequate for 404 CWA purposes.
  - ICF—there will be a need to have interim revisions in between review cycles that are already mapped out—but need to have clarity with other EIR/EIS reviewers that the 404 CWA review will have separate review track.
  - The Corps will flag their comments as to the relevant issue, such as obtaining permits vs. adequacy of the P/N for setting up screening of alternatives. The Corps should bring comments regarding permits to this (the 404/10 or DHCCP Permit meetings) forum.
- EPA will get back to team with comments on P/N by end of Nov. This would be accompanied by a letter exchange, with letters from DWR requesting confirmation that the P/N is adequate, followed by a return letter from Corps and EPA confirming adequacy.
- If EPA does not find the P/N adequate EPA will attempt to resolve via communication with DWR.

- **Screening criteria**

- Corps: need to have screening criteria beyond reliability and delivery demands.
- EPA raises the concern that if alternatives are eliminated because they do not meet the purpose and need, the elimination should be adequately supported by detail in the purpose and need section.
  - ICF—perhaps this detail could be placed in the appendix with criteria for reliability and supply.

- **CWA Permitting Approach**

- Mark Ebbin introduces the 404/10 permitting approach-- based on discussions in these meetings; the team developed a document that maps out the overall 404 approach for BDCP.
  - Purpose: implementation of BDCP actions.
  - 404(b)1 alternatives analysis will be conducted in the context of BDCP as a whole—recognizing interrelated actions that will be implemented over a long period of time.
  - Order of steps in the 404 permitting strategy:
    - Regional offsite LEDPA alternatives analysis.
    - Identification of separate and complete actions for other permits
    - Onsite alternatives analysis, permit by permit basis (for individual permits).
    - Other permits (NWP, LOP) etc.
- The BDCP is similar to a large scale development project with phased permitting. Critical milestones consist of the following steps:
  - Demonstrate that the overall BDCP is the LEDPA.
  - LEDPA analysis for on-site conveyance.
  - Permitting of later actions.
- Relationship of 404(b)(1) Analysis to the EIR/EIS:
  - The 404(b)(1) regional alternatives analysis for would be stand alone but would be developed in parallel with EIS to achieve efficiency and reconcile the two documents.
  - The regional document should be an appendix to EIS—to make clear to public continuity between documents.
- EPA comments on this approach:
  - Examples that show precedent for this kind of approach: Placer parkway, Placer county regional plan, high speed rail all used this approach but first looked at alternatives to the entire project:
    - High Speed Rail (HSR) identified HSR as project most likely to be LEDPA, vs. other alternatives such as modal. etc.—the team has not yet heard about programmatic alternatives being considered—only as to conveyance.

- Counsel responds saying that EPA not ready to buy in to the Regional LEDPA approach for BDCP. The project is implementation of BDCP; Initial LEDPA would look at alternatives within the project. The project is necessarily focused on compliance with the NCCP Act—so there aren't as many program alternatives. For this reason, the tiering approach is not directly analogous to the other projects.
- EPA emphasizes the need for alternatives to the program in the sequence of alternative consideration for tiering of 404/10 permitting. There should be some discussion as to why other programs have been screened out.
  - Examples: desalinization, buying water from outside the region, etc., alternatives to the emphasis on tidal marsh restoration.
- A comment was raised about the need to make sure the ESA agreement is sufficient for 404 permitting.
- A separate meeting to address CWA permitting approach should be organized.
- **Topics for future discussion/Action Items:**
  - a. Coordination with 408 review: confirm that 408 team is aware that 408 will not use a parallel program approach and that program-level review will not be used, by itself, to support 408 permission requests.
  - b. Is resolution about the regional/tiering approach necessary before the P/N for the EIS is finalized?
  - c. There is a sentence in the OPP that says that proposed project is water dependent as set out in guidelines—this is a legal conclusion for the Corps to make and is also not correct under the facts.